P.R. No. 6301/05
Presented by Shri Kipin Singh
dated 8/12/05

(1) (4)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR.

WRIT PETITION No. 6249 OF 2005

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

PETITIONER :: B.K.Pradhan, S/o. late Shri Pavitra Pradhan, aged about 50 years, R/o. Basna, Tahsil Basna, District Mahasamund (C.G.)

Vs.

RESPONDENTS : 1) State of Chhattisgarh, through Secretary
School Education, Department, Government of Chhattisgarh, DKS Bhavan, Mantralaya, Raipur (C.G.)

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: 2) Director,
Public Education Chhattisgarh, Raipur (C.G.).

: 3) District Education Officer
Mahasamund (C.G.)

: 4) Block Education Officer
Basna, District Mahasamund (C.G.)

: 5) Satya Narayan Sharma
Assistant Grade II
Block Education Office, Basna
District Mahasamund (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, ORDER/ORDERS, DIRECTION/DIRECTIONS etc.

The petitioner most respectfully begs to submit as under :-

1. **PARTICULRS OF THE PETITIONER:**

As mentioned in the cause title.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ...W.P.6249/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5-7-2006

Mr. Vipin Singh, counsel for the petitioner.

Mr. A.S. Kachhawaha, Govt. Advocate for the State/respondents No.1 to 4.

Miss Sharmila Singhai, counsel for respondent No.5.

Heard.

By the instant writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned legality, propriety and correctness of the order dated 31-8-2005, whereby the petitioner has been transferred from the post of Accountant, Block Education Officer, Basna, to the Government High School, Bhukel, and pursuant to that order, the petitioner has joined in Govt. High School, Bhukel. There is no budget allotment for the post of Accountant, Govt. High School, Bhukel. When this fact was pointed out to the District Education Officer, Mahasamund, he issued a letter dated 17-10-2005 wherein he admitted that there is no allotment of fund for the post of Accountant in Govt. High School, Bukel, therefore, the petitioner's salary should be paid from the Office of Block Education Officer, Basna, till further orders. In place of the petitioner, respondent No.5, who is Assistant Grade-II, has been transferred on his own request. The transfer of the petitioner is politically motivated and mala fide.

Return has been filed on behalf of the State/respondents No.1 to 4, in which it has been mentioned that there is the post of Accountant in Govt. High School, Bhukel, but the same was vacant since long, therefore, there is no

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

allocation of budget for the post of Accountant and it is denied that the petitioner has been transferred to accommodate respondent No.5.

Having heard learned counsel for the parties, I have perused the record. It is settled law that transfer can be questioned on the ground of incompetence of the transferring authority or when the transfer has been made on mala fide grounds, contrary to the statutory rules. It has been mentioned in the petition that the petitioner has been transferred in order to accommodate respondent No.5 and further the petitioner has been transferred on mala fide grounds. In order to challenge the transfer on the ground of mala fide, the petitioner is required not only to allege the mala fides, but has to establish the same. There is nothing on record, which shows that the petitioner has been transferred on mala fide ground. Therefore, for this reason, I do not find any substance in the point raised by the petitioner.

Learned counsel for the petitioner argued that the petitioner is not getting salary since he joined on the post at Bhukel.

It is evident from the letter Annexure P-10 written by the District Education Officer as well as the return filed by the State/respondents No.1 to 4 that even though there is post of Accountant in Govt. High School, Bhukel, but as the said post was lying vacant since long, there was no allocation of budget and accordingly, the District Education Officer ordered that the petitioner's salary may be paid from Basna. It is the internal arrangement of the respondents. When the petitioner was posted to Bhukel, it is the duty of the District Education Officer to ensure that necessary budget is allotted and the petitioner is paid salary.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	In the circumstances, respondent No.3 is directed to ensure that all the salary outstanding be paid to the petitioner within 15 days from the date of receipt of a copy of this order and if for any reason it is not possible to pay the salary from Bhukel then the respondents should consider his transfer on a place where he could get the salary. As has been mentioned that the post of Accountant at ~~Bhukel~~ Basna is already lying vacant, if there is no other impediment in transferring the petitioner to the post of Accountant at Basna, then the respondents may consider posting of the petitioner to Basna, in case it is not possible to make payment of salary to the petitioner at Bhukel. With the directions aforesaid, the petition stands disposed of. Parties are entitled for certified copy of this order. Sd/- L.C.Bhadoo Judge	